Feedmeal (M) Sdn Bhd v Teh Cho Yeow & Ors

HIGH COURT (MELAKA) — SUIT NO 1–22–119 OF 2000
LOW HOP BING J
25 AUGUST 2005

Civil Procedure — Action — Cause of action — Monetary judgment — Land transferred by defendant to his daughters subsequent to judgment — Whether plaintiff had locus standi to commence action for declaration that transfer was null and void — Whether plaintiff must show sufficient and special nexus and interest in the subject matter of the action — Whether court should adjudicate on merits of plaintiff's claim

The plaintiff had on 26 December 1995 caused to be issued a civil action in the Shah Alam sessions court against the first defendant for the price of goods, ie feed meal sold and delivered to the first defendant. On 19 February 1997, the plaintiff had obtained judgment against the first defendant (D1) in the sessions court. D1's appeal to the Shah Alam High Court had been dismissed. On 5 August 1996, the land held under GM 168, Lot 242, in the mukim of Chabau, district of Jasin was transferred by D1 to the second, third and fourth defendants (D2, D3 and D4) who were D1's daughters. On 25 September 2000, the plaintiff commenced the instant action seeking, *inter alia,* a declaration that the transfer was null and void. Subsequently, the plaintiff filed a summons in chambers for an order that pursuant to r 28(a) of the Legal Profession (Practice and Etiquette) Rules 1978, the firm of solicitors Messrs Yap Koon Roy & Associates be barred from acting for the defendants; and the defendants on the other hand filed another summons in chambers under O 14A read with O 33 r 2 of the Rules of the High Court 1980 for a determination as to whether the plaintiff had *locus standi* to bring this action against the defendants.

Held, dismissing the defendants' application with costs:

(1) The defendants' application was originally filed by Messrs Yap Koon Roy & Associates, but written submission had now been filed by another firm of solicitors, Messrs HS Lee Chua & Partners, as solicitors for the defendant. This scenario had given rise to the irresistible inference that Messrs Yap Koon Roy & Associates had discharged themselves from acting or have evinced an intention of not desiring to act further as solicitors for the defendants. In the circumstances, it was clear that plaintiff's application to bar Messrs Yap Koon Roy & Associates from acting for the defendants had been overtaken by events and would require no further consideration by this court (see paras 3–4).

(2) The plaintiff as the creditor of D1 had raised a sufficient and special nexus and interest in the subject matter of the action so as to give the necessary legal standing to justify the seeking of the declaratory relief. In essence, he had *locus standi* to bring and maintain this action against all the defendants (see para 21).

(3) At this stage of the interlocutory application, the issue of *locus standi* was a mere preliminary issue. In arriving at the answer as stated above, it was not appropriate for the court to embark upon the consideration of the merits of the plaintiff's claim, which would revolve around two other issues viz the *bona fide* of the transaction between D1 the father and the other three defendants, the daughters, and secondly whether that was effected with intention to defraud the plaintiff as D1's creditor. That can only be resolved by reference to a mature consideration of *viva voce* evidence which in turn must be tested through the process of cross-examination and re-examination at the full trial (see para 22).

[**Bahasa Malaysia summary**

Plaintif telah pada 26 Disember 1995 memulakan satu tindakan sivil dimulakan di mahkamah sesyen Shah Alam terhadap defendan pertama untuk harga barangan, iaitu makanan kisar yang dijual dan dihantar kepada defendan pertama. Pada 19 Februari 1997, plaintif telah mendapat penghakiman terhadap defendan pertama (D1) di mahkamah sesyen. Rayuan D1 di Mahkamah Tinggi Shah Alam telah ditolak. Pada 5 Ogos 1996, tanah yang dipegang di bawah GM 168, Lot 242, Mukim Chabau, daerah Jasin telah dipindahmilikkan oleh D1 kepada defendan-defendan kedua, ketiga dan keempat (D2, D3 dan D4) yang merupakan anak-anak perempuan D1. Pada 25 September 2000, plaintif telah memulakan tindakan ini memohon, antara lain, satu deklarasi bahawa pindah milik itu batal dan tidak sah. Berikutan itu, plaintif telah memfailkan satu saman dalam kamar untuk satu perintah bahawa menurut k 28(a) Kaedah-Kaedah Profesyen Undang-Undang (Amalan dan Etika) 1978, firma guaman Tetuan Yap Koon Roy & Associates dihalang daripada bertindak untuk defendan-defendan, dan di bawah A 14A dibaca bersama A 33 k 2 Kaedah-Kaedah Mahkamah Tinggi 1980 untuk satu penentuan sama ada plaintif mempunyai *locus standi* untuk memulakan tindakan ini terhadap defendan-defendan.

Diputuskan, menolak permohonan defendan-defendan dengan kos:

(1) Permohonan defendan-defendan pada asalnya telah difailkan oleh Tetuan Yap Koon Roy & Associates, tetapi hujah bertulisnya sekarang ini difailkan oleh firma guaman lain, Tetuan HS Lee Chua & Partners, sebagai peguamcara bagi pihak defendan. Senario ini telah menimbulkan inferens yang tidak dapat dibendung bahawa Tetuan Yap Koon Roy & Associates telah menarik diri daripada bertindak atau telah menampakkan satu niat untuk tidak berhasrat lagi bertindak sebagai peguamcara bagi pihak defendan. Dalam keadaan sedemikian, adalah jelas bahawa permohonan plaintif untuk menghalang Tetuan Yap Koon Roy & Associates telah diselesaikan oleh kejadian ini dan tidak perlu dibicarakan oleh mahkamah ini (lihat perenggan 3–4).

(2) Plaintif sebagai pemiutang D1 telah menunjukkan satu hubungan dan kepentingan yang memadai dan istimewa dalam perkara pokok tindakan tersebut untuk memberikan pendirian undang-undang yang wajar bagi menjustifikasikan pemohonan relief deklarasi. Pendek kata, beliau mempunyai *locus standi* untuk memula dan mengekalkan tindakan ini terhadap defendan-defendan (lihat perenggan 21).

(3) Di peringkat permohonan interlokutori ini, persoalan tentang *locus standi* hanya merupakan persoalan permulaan. Untuk tiba kepada jawapan seperti yang dinyatakan di atas, ia tidak sesuai bagi mahkamah memulakan pertimbangan merit tuntutan plaintif, yang merangkumi dua persoalan lain melalui pindah milik *bona fide* antara D1, bapa dan tiga defendan lain, iaitu anak-anak perempuannya, dan keduanya sama ada ia dilaksanakan dengan niat untuk menipu plaintif sebagai pemiutang D1. Ini hanya boleh diselesaikan dengan merujuk kepada pertimbangan matang keterangan *viva voce* yang perlu diuji melalui proses pemeriksaan balas dan pemeriksaan semula dalam perbicaraan penuh (lihat perenggan 22).]

Notes

For cases on cause of action, see 2(1) *Mallal's Digest* (4th Ed, 2004 Reissue) paras 40–54.

Cases referred to

EM Buxton & Anor v Packaging Specialists Sdn Bhd [1987] 1 MLJ 342 (refd)

Hiap Yiak Trading Sdn Bhd & Ors v Oim Hin & Co (M) Sdn Bhd [1989] 2 MLJ 366 (refd)

Lee Hock Mee v Pengarah Jabatan Pengangkutan Jalan Negeri Perak & Ors [2000] 1 MLJ 723 (refd)

Reese River Silver Mining Co v Atwell (1869) LR 7 Eq 347 (refd)

Standard Chartered Bank v Yap Sing Yoke & Ors [1989] 2 MLJ 49 (refd)

Tan Sri Haji Othman Saat v Mohamed bin Ismail [1982] 2 MLJ 177 (refd)

Legislation referred to

Legal Profession (Practice and Etiquette) Rules 1978 r 28(a)

National Land Code 1965 s 340(1)

Rules of the High Court 1980 O 14A, O 33 r 2

ST Lee (ST Lee & Partners) for the plaintiff.

Anthony Chua Yong Giap (HS Lee Chua & Partners) for the defendant.

Low Hop Bing J:

I APPLICATIONS

[1] Before me are two summonses in chambers viz:

(1) encl (69) filed by the plaintiff for an order that pursuant to r 28(a) of the Legal Profession (Practice and Etiquette) Rules 1978, the firm of solicitors Messrs Yap Koon Roy & Associates be barred from acting for the defendants; and

(2) encl (73) filed by the defendants under O 14A read with O 33 r 2 of the Rules of the High Court 1980 for a determination as to whether the plaintiff has *locus standi* to bring this action against the defendants.

[2] Numerous consequential prayers have been sought by the parties herein but in essence the fundamental prayers set out above would no doubt effectively dispose of their respective applications.

II MESSRS YAP KOON ROY & ASSOCIATES

[3] Defendants' application in encl (73) was originally filed by Messrs Yap Koon Roy & Associates, but written submission has now been filed by another firm of solicitors, Messrs HS Lee Chua & Partners, as solicitors for the defendant. This scenario has given rise to the irresistible inference that Messrs Yap Koon Roy & Associates have discharged themselves from acting or have evinced an intention of not desiring to act further as solicitors for the defendants.

[4] In the circumstances, it is clear that plaintiffs application in encl (69) to bar Messrs Yap Koon Roy & Associates from acting for the defendants had been overtaken by events and would require no further consideration by me.

III FACTUAL BACKGROUND

[5] The plaintiff had on 26 December 1995 caused to be issued a civil action in the Shah Alam sessions court vide Summons No 52–160 of 1996 against the first defendant for the price of goods, ie feed meal sold and delivered to the first defendant (D1).

[6] On 19 February 1997, the plaintiff had obtained judgment against D1 in the sessions court. D1's appeal to the Shah Alam High Court had been dismissed.

[7] On 5 August 1996, the land held under GM 168, Lot 242, in the mukim of Chabau, district of Jasin was transferred by D1 to the second, third and fourth defendants (D2, D3 and D4) who are D1's daughters.

[8] On 25 September 2000, the plaintiff commenced the instant action seeking, *inter alia,* a declaration that the transfer is null and void.

IV LOCUS STANDI

[9] In arguing that the plaintiff has no locus standi, defendants' learned counsel Mr Anthony Chua Yong Giap relied on s 340(1) of the National Land Code 1965 under which D2, D3 and D4 were said to have obtained indefeasible title to the land, and that the plaintiffs claim against D1 is only monetary, having no interest in the land. The following authorities were cited in support:

(1) *EM Buxton & Anor v Packaging Specialists Sdn Bhd* [1987] 1 MLJ 342 (HC);

(2) *Standard Chartered Bank v Yap Sing Yoke & Ors* [1989] 2 MLJ 49 (HC); and

(3) *Hiap Yiak Trading Sdn Bhd & Ors v Oim Hin & Co (M) Sdn Bhd* [1989] 2 MLJ 366 (HC).

[10] Mr ST Lee, learned counsel for the plaintiff, contended that the plaintiff has *locus standi* on the ground that the sale and purchase transaction between D1 of the one part, and the other defendants of the other part was not *bona fide* and was intended to defraud the plaintiff who is D1's creditor.

[11] Having carefully considered the above submissions, I am of the view that the sole preliminary issue for determination is whether the plaintiff has been clothed with the necessary *locus standi* to bring and maintain this action against all the defendants.

[12] A good starting point is to ascertain the relevance of the authorities cited for the defendants.

[13] First, in *EM Buxton*, Siti Norma Yaakob J (now CJ (Malaya)) made it absolutely clear that the only issue before her Ladyship was whether the respondent as purchaser of land had a registrable interest over the land capable of being protected by a caveat. No issue of *locus standi* was ever raised for determination there.

[14] Next, the plaintiff in *Standard Chartered Bank*, sought a declaration, inter alia, that the plaintiffs charge in equity and private caveat be duly registered and an order that the writ of seizure and sale be set aside. Nothing turned on the issue of locus standi there for Lamin J (later PCA) to decide thereon.

[15] The third and final case concerns the issue of caveatable interest raised in *Hiap Yiak Trading Sdn Bhd* and, as in the other two authorities, no issue of locus standi arose before Eusoff Chin J (later Chief Justice Malaysia).

[16] There can be no doubt in my mind that none of the above authorities can render any assistance to the defendants in pursuing the issue of *locus standi* in their application herein.

[17] Harking back to fundamental principles, it appears to me that a useful purpose would be served by stating that the expression 'locus stand' means a place to stand on, a legal standing. To say that a person has no locus standi meams that he has no right to appear or be heard in a proceeding: p 1115 *Jowitt's Dictionary of English Law* (2nd Ed) by John Burke Vol 2 (1977).

[18] In addressing the issue of locus standi, I find it instructive to refer to *Tan Sri Haji Othman Saat v Mohamed bin Ismail* [1982] 2 MLJ 177 where the Federal Court attributed locus standi to one Mohamed bin Ismail who was one of the 184 unsuccessful applicants for land as he has an interest in the subject matter of the action in which he alleged that the land in the area had been alienated to a number of people, including the then senior state dignatories and other personages in the upper echelon of the administrative service. His interest was held to be a special or substantial interest in the subject matter of the proceedings therein and that interest was particularly affected, thereby giving him capacity to sue as there could be no justification in debarring him from doing so: per Abdoolcader J (later SCJ) in delivering the judgment of the Federal Court, at pp 178 and 179.

[19] This Federal Court judgment was followed in *Lee Hock Mee v Pengarah Jabatan Pengangkutan Jalan Negeri Perak & Ors* [2000] 1 MLJ 723 by Clement Skinner JC (now J) who held that where the plaintiffs application for renewal of a road vehicle licence was refused by the defendant on the ground that he had an outstanding traffic offence, the plaintiff has an interest in the subject matter of the action so as to justify his seeking relief.

[20] The question of locus standi in the sense of an entitlement to sue was raised in *Reese River Silver Mining Company v Atwell* (1869) LR 7 Eq 347. There, a settlor, Atwell, was the chairman of Reese River Silver Mining Company ('the company'). Atwell, inter alia, had authorised the paiyment of a sum of £6,000 out of the company's funds. The company was subsequently wound-up. The official liquidator then took out a summons to examine Atwell's authorisation of the said payment, so as to order Atwell to refund and repay to the assets of the company. Atwell consulted his legal adviser and conveyed away his property for the benefit of his children, reserving power for the trustees to pay him such part of the income as they might think fit. Lord Romilly held, *inter alia,* that even in the absence of any lien or charging order on the property, the company was entitled to sue Atwell.

[21] Reverting to the factual background on the basis of the affidavits filed herein, it is my specific finding that the plaintiff as the creditor of D1 has raised a sufficient and special nexus and interest in the subject matter of the action so as to give the necessary legal standing to justify the seeking of the declaratory relief. In essence, he has locus standi to bring and maintain this action against all the defendants.

A V MERITS OF PLAINTIFF'S CLAIM

[22] At this stage of the interlocutory application, the issue of locus standi is a mere preliminary issue. In arriving at the answer as stated above, it is not appropriate for me to embark upon the consideration of the merits of the plaintiffs claim, which would revolve around two other issues viz the bona fide of the transaction between D1 the father and the other three defendants, the daughters, and secondly whether that was effected with intention to defraud the plaintiff as D1's creditor. That can only be resolved by reference to a mature consideration of viva voce evidence which in turn must be tested through the process of cross-examination and re-examination at the full trial.

C IV CONCLUSION

[23] The defendants' application in encl (73) seeking to negate the plaintiffs locus standi is without substance and is therefore dismissed with costs.

D *Defendants' application dismissed with costs.*

Reported by AG Kalidas

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